

SIGNED.



Dated: March 22, 2005

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|-------------------------------|---|-----------------------------|
| In re |) | Chapter 11 |
| |) | |
| CAMELBACK CASTLE CORPORATION, |) | CASE NO. 2-04-16235-RJH |
| |) | CASE NO. 2-04-16397-RJH |
| Debtor. |) | (Jointly Administered) |
| _____ |) | |
| JERRY W. MITCHELL, |) | MEMORANDUM DECISION DENYING |
| |) | U. S. TRUSTEE'S MOTION FOR |
| Debtor. |) | APPOINTMENT OF TRUSTEE |
| _____ |) | |

The U. S. Trustee moved for appointment of a Trustee in this case primarily based upon a web site and a brochure that appeared to offer property of the estate for sale at auction without Court authority. After trial, however, the Court is convinced that the Debtors did not in fact, and did not intend to, offer property of the estate for sale at either advertised auction. Instead, there was an agreement by the Debtors and the auctioneer to take advantage of the Debtor's location and notoriety to enhance the auction sale of other property brought to auction by the auctioneer, for which the Debtor would be awarded a percentage of the commissions. While this is definitely an outside of the ordinary course of the business transaction for which Court approval should have been obtained, it is not sufficiently egregious to warrant appointment of a trustee. In addition, even if the sale had occurred as planned, it appears that it would have benefitted the estate rather than resulted in the depletion of its assets.

Evidence submitted at the trial does indicate, however, that the Debtors engage in a substantial co-mingling of assets and maintain grossly inadequate accounting for numerous transfers among the debtor and the non-debtor entities. While this might be adequate grounds for appointment of a trustee, it does not appear from the evidence that these transfers have

1 resulted in an actual diminution of the estate. None of the transfers reflects an intent to
2 personally benefit the Debtor or other insiders.

3 Finally, it does not appear that a trustee could run the Debtor' business any
4 better than do the Debtors, or that a trustee could obtain better sale prices for the assets the
5 Debtors intend to sell. Appointment of a Trustee would, however, impose substantial additional
6 administrative expenses on this estate.

7 For the foregoing reasons, the Court denies the Motion to Appoint a Trustee.
8 This is, of course, without prejudice. The Court may well grant a new motion for the
9 appointment of trustee in the event the Debtor is unsuccessful in closing the sales the Debtor
10 testified he intended to make, or if there is no substantial improvement in accounting for inter-
11 company transfers. In order to monitor both of those situations, the Court sets an evidentiary
12 status hearing for 3:00 p.m. on April 13, 2005, at which the Debtor will be expected to testify
13 regarding the Debtor' business, any inter-company transfers, and efforts to sell property of the
14 estate.

15 The Motion for Appointment of a Trustee is denied.

16 DATED AND SIGNED ABOVE

17
18 Copy of the foregoing mailed/delivered
19 this 22d day of March, 2005, to:

20 Trudy A. Nowak
21 Office of the U.S. Trustee
22 230 North First Avenue, Suite 204
23 Phoenix, AZ 85003

24 Thomas G. Luikens, Esq.
25 Ayers & Brown, P.C.
26 4127 North 32nd Street, 1st Floor
27 Phoenix, AZ 85018
28 Attorneys for Debtors

29 /s/ Pat Denk
30 Judicial Assistant